UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

INDUSTRIAL CARRIERS INC.,

Plaintiff,

- against -

DYNACOAL LTD.,

Defendant.

_____v

08 CV 03446



VERIFIED COMPLAINT

Plaintiff, INDUSTRIAL CARRIERS INC. (hereinafter referred to as "Plaintiff" or "ICI"), by and through its attorneys, Tisdale Law Offices LLC, as and for its Verified Complaint against the Defendant, DYNACOAL LTD., (hereinafter referred to as "Defendant" or "Dynacoal"), alleges, upon information and belief, as follows:

- 1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333.
- 2. At all times material to this action, Plaintiff was, and still is, a foreign company duly organized under and existing by virtue of foreign law with a registered address in Majuro, Marshall Islands.
- 3. Upon information and belief, Defendant Dynacoal was, and still is, a foreign corporation or other business entity organized under and existing by virtue of foreign law with a principal place of business in the British Virgin Islands.
- 4. By a charter party dated October 10, 2007, the Plaintiff chartered the "MV PIONEER SKY" to the Defendant for the carriage of a cargo of "datong sized steam coal" from

Qinhuangdao and Jingtang Port, China to Nemrut Bay and Diliskelesi, Turkey (hereinafter referred to as the "October 10 Contract").

- 5. By a second charter party dated December 10, 2007, the Plaintiff chartered the "MV FOUR EARTH" to the Defendant for the carriage of a cargo of "bulk coal" from "1SB JINTANGGANG AND/OR 1SB XINGANG" to "1SB NEMRUT BAY AND/OR 1SB DILISKELESI" (hereinafter referred to as the "October 12 Contract")(collectively referred to as the "charter parties" or the "charter party contracts").
- 6. Certain disputes arose between the parties when the defendant failed to pay ocean freight, deadfreight, demurrage, cargo heating expenses and the costs of draft surveys in breach of the charter party contracts.
- 7. As a result of Defendant's breaches the charter party contracts, Plaintiff has suffered damages in the principal amount of \$712,276.15. See December 19, 2007 Voyage Statement of Accounts for the M/V Pioneer Sky annexed hereto as Exhibit "1." See February 27, 2008 Voyage Statement of Accounts for the M/V Four Earth annexed hereto as Exhibit "2."
- 8. Despite due demand, Defendant has failed to pay the sums due and owing as a result of its breaches of the charter party contracts.
- 9. The charter party contracts provide that any disputes arising thereunder shall be referred to London Arbitration with English law to apply.
- 10. Plaintiff will soon commence arbitration and appoint its arbitrator in accordance with the charter parties.
- 11. Interest, costs and attorneys' fees are routinely awarded to the prevailing party in London Arbitration. As best as can now be estimated, Plaintiff expects to recover the following amounts:

A. Principal claim:

\$712,276.15

MV PIONEER SKY C/P dd. 10.10.2008

\$329,769.58

MV FOUR EARTH C/P dd. 12.10.2008

\$382,506.57

B. Estimated interest on claims:

\$178,048.25

3 years at 7.5%

C. Estimated arbitration costs and attorneys' fees:

\$200,000.00

Total

\$1,090,324.40

- 12. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.
- 13. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any property of the Defendant held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendant, to compel arbitration and to secure the Plaintiff's claim as described above.

WHEREFORE, Plaintiff prays:

- A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint, failing which default judgment be entered against it in the sum of \$1,090,324.40.
 - B. That since the Defendant cannot be found within this District pursuant to

Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$1,090,324.40 belonging to, due or being transferred to, from, or for the benefit of the Defendant, including but not limited to such property as may be held, received or transferred in Defendant's name or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishee(s) to be named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

- C. That pursuant to 9 U.S.C. §§201 et seq. this Court recognize and confirm any London arbitration award in Plaintiff's favor against the Defendant as a judgment of this Court;
- D. That this Court award Plaintiff the attorneys' fees and costs incurred in this action; and

E. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: April 8, 2008 New York, NY

The Plaintiff, INDUSTRIAL CARRIERS INC.,

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By:

Lauren C. Davies (LD 1980)
Thomas L. Tisdale (TT 5263)
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ATTORNEY'S VERIFICATION

State of Connecticut)
) ss.: City of Southport
County of Fairfield)

- 1. My name is Lauren C. Davies.
- I am over 18 years of age, of sound mind, capable of making this
 Verification, and fully competent to testify to all matters stated herein.
- 3. I am an Associate in the firm of Tisdale Law Offices, LLC, attorneys for the Plaintiff.
- 4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
- 5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
- 6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
 - 7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated:

April 8, 2008 Southport, CT

Lauren C. Dávijes

EXHIBIT 1



Registered Office: P.O. Box 1405, Majuro, Marshall Islands, MH, 96960

VOYAGE STATEMENT OF ACCOUNTS

19th of December, 2007

Charterers

DYNACOAL LIMITED

Vessel C/P dated PIONEER SKY 10.10.2007

Cargo

DATONG SIZED STEAM COAL

Total Loaded Quantity

74 076,000 MTs

Ports of loading Ports of discharge QINHUANGDAO + JINGTANG PORT, CHINA NEMRUT BAY + DILISKELESI, TURKEY

Ocean freight	74 076 000	mts @ USD	60,40 per mt	= USD	4 474 190,40
Deadfreight	1 200,000	mts @ USD	60,40 per mt	= USD	72 480,00
Total				= USD	4 546 670,40
Less remitted by Charterers				= USD	(4 099 930,00)
Less remitted by Charterers				= USD	(150 445,88)
·				≖ USD	(223 674,52)
Less remitted by Charterers				= USD	(118 794,58)
Less remitted by Charterers				= USD	118 829,58
Plus demurrage at Loadports					•
Plus demurrage at Dischports				= USD	255 514,58
Plus 50 pct of cost for draft surveys at	Load & Dischpo	orts		= USD	1 600,00
Total due to Owners					329 769,58

Please remit USD

329 769,58

to following bank account:

HSBC BANK PLC

93, AKTI MIAOULI STR., PIRAEUS BRANCH, GREECE

SWIFT NUMBER: MIDLGRAA

IBAN NUMBER: GR67 0710 0010 0000 0106 6687 071

IN FAVOR OF: WEAVER INVESTMENTS INC

ACC. NO.: 001.066687.071 CORR BANK: HSBC BANK USA

SWIFT: MRMDUS33.

ACC. 000047791 OF HSBC BANK PIRAEUS GREECE

WITH REFERENCE: M/V PIONEER SKY / DYNACOAL VSOA

EXHIBIT 2



Registared Office: P.O. Box 1405, Majuro, Marshall Islands, MH, 96960

VOYAGE STATEMENT OF ACCOUNTS

27th of February, 2008

Charterers

DYNACOAL

m/v

FOUR EARTH

C/P dated

10.12.2007

Cargo Quantity COAL IN BULK 69 370,000 mts

Port of loading

JINGTANG

Port of discharge

DILISKELESI, TURKEY

Ocean freight	69 370,000 mts @ USD	50,00 per mt	= USD	3 468 500,00
Total	69 370,000 mts @ USD	50,00 per mt	= USD	3 468 500,00
Less remitted by Charterers on 22.01.08			USD	(1 999 965,00)
Less remitted by Charterers on 29.01.08			USD	(1 295 040,00)
Less dispatch at Load Port			USD	(8 948,33)
Plus expences due to call Singapore due to cargo heating			USD	172 029,90
Plus demmurage at Disch ports			USD	45 030,00
Plus costs for draft surveys, 50	%		USD	900,00
Total due to Owners			USD	382506,57

Please remit USD

382 506,57

to following bank account:

HSBC BANK PLC

93, AKTI MIAOULI STR., PIRAEUS BRANCH, GREECE

SWIFT NUMBER: MIDLGRAA

IBAN NUMBER: GR67 0710 0010 0000 0106 6687 071

IN FAVOUR OF: WEAVER INVESTMENTS INC

ACC. NO.: 001.066687.071 CORR BANK: HSBC BANK USA

SWIFT: MRMDUS33,

ACC. 000047791 OF HSBC BANK PIRAEUS GREECE

WITH REFERENCE: M/V FOUR EARTH / DYNACOAL